

DISPUTE RESOLUTION SERVICE

D00008580

Decision of Independent Expert

RTA (Business Consultants) Ltd

and

Ms Dawn Burdett

1. The Parties:

Lead Complainant: RTA (Business Consultants) Ltd
Discovery House
Crossley Road
Stockport
Cheshire
SK4 5BH
United Kingdom

Complainant: Mr Paul O'Reilly
2, Hepple Close
Heaton Mersey
Stockport
Cheshire
SK4 3RR
United Kingdom

Respondent: Ms Dawn Burdett
5 Monk Street
Tutbury
Burton
Staffs
DE13 9NA
United Kingdom

2. The Domain Name:

rta-complaints.co.uk

3. Procedural History:

A Complaint in respect of < rta-complaints.co.uk> (the “Domain Name”) under Nominet UK’s Dispute Resolution Service Policy (“the Policy”) was received from the Complainants on May 10, 2010 and forwarded to the Respondent by Nominet next day. A Response was received from the Respondent on May 17, 2010 and the Complainant lodged a Reply on May 18, 2010.

On June 23, 2010 the undersigned Alan L. Limbury was appointed as Independent Expert to determine the dispute in accordance with Nominet’s Procedure for the conduct of proceedings under the Dispute Resolution Service (the “Procedure”). I confirmed to Nominet that I am independent of the parties and know of no facts or circumstances that might call into question my independence or impartiality in the eyes of the parties.

4. Factual Background

The Registrant of the Domain Name is “DMBCS”. The Respondent is a director of a company called DMBCS Limited. The Domain Name was registered on February 10, 2010. It leads to a website at <www.rta-complaints.blogspot.com> devoted to complaints by clients and former clients of the Lead Complainant (“RTA”), a business transfer agent, which has carried on business under the name RTA since 1972. The Complainant Mr. O’Reilly is a director and Executive Chairman of RTA. The Respondent is a former client of RTA. Her story appears, together with others, on that website. Those stories are severely critical of the RTA’s business practices. The website offers advice and help to those having problems with RTA.

5. Parties’ Contentions

Complainants

The Complainants say that RTA’s trading style, since it started trading in 1972, has always been RTA and that it has always used its logo on all documentation, letterheads, contracts, advertisements and websites since inception.

The Complainants say that, in the hands of the Respondent, the Domain Name is an abusive registration. To any casual observer the website reached via the Domain Name would be perceived as a legitimate site owned and operated by RTA, whereas it is a campaigning site seeking to provide a platform for those with

a complaint about RTA to share their experiences and seek advice, which is freely offered by the owners, administrators and contributors on the site.

There has been no attempt to ask RTA to contribute or comment on any article or comment and the website contains factually inaccurate information as well as defamatory comments and opinions. The web site is campaigning in nature and seeks to offer advice to others for the sole purpose of defeating what it sees as 'unfair' and 'bullying' contractual terms. It offers no balance and no opportunity for RTA to offer a counter argument. The Domain Name and its associated website therefore paint a totally one sided and negative picture of RTA.

RTA has invested in optimising its own website for the search term RTA. A 'Google' search of that term shows the company at the top of the natural rankings for both the UK and Worldwide searches. A search for 'RTA Business' would find 'RTA business consultants complaints' as the second suggested result. This is unfair as the keyword being picked up by Google is RTA, in which the company has invested heavily in search engine optimisation ("SEO"). The searcher would then go on to visit www.rta-complaints.co.uk, to be presented with negative, biased and unbalanced comment. In this way the Domain Name and associated website benefit unfairly from the company's SEO efforts since the visitor experiences 'initial interest confusion'. This is the basis to find Abusive Registration. Further, having been 'drawn' to the site, the visitor is faced with an unauthorised criticism site devoted to RTA and will have been sucked in or deceived by the Domain Name.

Respondent

The Respondent says the Domain Name was registered by DMBCS Limited, an IT Consultancy firm, on behalf of a group of current and ex-clients of RTA who are in dispute or have been in dispute with RTA. The website is owned, administered and contributed to by a group established in November, 2009 known as "The RTA Complainants" having currently more than 100 members. Their aim is to set up a support group for clients of RTA.

The website <www.rta-complaints.co.uk>, in redirecting to the site <www.rta-complaints.blogspot.co.uk>, is quite evidently a criticism website and therefore constitutes fair use. Furthermore, it is also very obviously a non-commercial website as no services are offered.

To a casual observer it would be self-evident from the suffix "complaints" (similar to so-called 'sucks' sites) that the site would be in protest of "www.RTA-" and therefore not owned or operated by RTA, whether or not that company has rights over those initials, which is not clear, since there are other legitimate businesses and organisations with the same or similar names to "RTA". In addition, any reasonable person – even a client of RTA – would associate "RTA" with "Road Traffic Accident" in the first instance.

Further, it is clear from the content of the website that the website is neither owned nor operated by RTA.

Contrary to the Complainants' claim that "there has been no attempt to ask RTA to contribute or comment on any article", RTA has been asked by a website contributor to respond to articles and to point out any inaccurate or defamatory comments but has chosen not to respond to the request. As is the format of 'blog' sites, all articles and posts have the availability of reader comments. The Complainants have not issued comments on any article or post submitted to the site.

As to 'initial interest confusion' and the assertion that the Domain Name benefits from RTA's SEO efforts, the Complainants have placed reliance on 'Google Suggest' in support of their claim. However, 'Google Suggest' provides a dropdown list of suggested keywords, all of which are based on what previous Google users have typed in, not on SEO. This shows that many users are searching for those keywords and are fully expecting a site about complaints. There is no association between the Domain Name and the 'Google Suggest' facility. Hence there is no evidence of 'initial interest confusion' nor of 'benefitting from SEO'.

The assertion that a person searching for RTA is offered the result 'RTA Business consultants complaints' and then visits www.rta-complaints.co.uk is incorrect and does not constitute evidence of Abusive Registration. The 'offered result' is provided by 'Google Suggest' which, as mentioned, is in no way associated with the Domain Name as it is based on previous searches made by Google users. If one were to use the suggested search for "RTA business consultants complaints" one would find damning newspaper articles about RTA in the top spot and further complaints about it at other websites, none of which are associated with any of the owners or contributors of the disputed website. In fact the Domain Name is not evident in at least the top ten pages. Therefore, the Complainants have not provided evidence of a user being "sucked in/deceived by the domain name".

The Complainants' real issue is with the content of the site and this is not within the jurisdiction of the DRS.

The Respondent relies on the following cases in support of its Response: DRS 05122 – joiedevivreholidays.co.uk; D2006-1194 – Ryanaircampaigns.org; DRS 2193 – guidestar.co.uk; DRS 04129 – royalb-of-scotlandonline.co.uk and DRS 4285 – knightslettings.co.uk.

6. Discussions and Findings

Under paragraph 2 of the Dispute Resolution Service Policy ("the Policy") a complainant is required to show, on the balance of probabilities, that;

- (1) it has rights in respect of a name or mark which is identical or similar to the Domain Name; and
- (2) the Domain Name in the hands of the Respondent is an Abusive Registration.

“Rights” are defined in the Policy as “rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning”.

Rights

The corporate name of the Lead Complainant is RTA (Business Consultants) Ltd. I find that the Domain Name is not identical or similar to that name.

The dominant feature of the Lead Complainant’s logo, as is apparent from its website at <www.rtabusinessesforsale.com>, is the name “RTA”. I am prepared to accept that, having provided business transfer agency services under the name “RTA” for many years, the Lead Complainant has common law trademark rights in that name.

The Domain Name wholly incorporates the Lead Complainant’s “RTA” mark, together with a hyphen and the suffix “complaints”. In considering similarity, the hyphen and the “.co.uk” suffix are to be disregarded as inconsequential.

I find that the Domain Name to be similar to the “RTA” mark.

Abusive Registration

Abusive Registration is defined in the Policy as:

“...a domain name which either;

- (i) was registered or otherwise acquired in the manner which, at the time when the registration or acquisition took place, took unfair advantage of, or was unfairly detrimental to the Complainant’s rights; or
- (ii) has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.”

Paragraph 3(a) of the Policy provides a non-exhaustive list of factors that may be evidence that a domain name is an Abusive Registration. The Complainants rely on the following provisions:

3ai Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name

C. primarily for the purpose of unfairly disrupting the business of the Complainant;

and

3aai Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way that has confused or is likely to confuse

people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant;

Paragraph 4(a) of the Policy sets out a similar list of factors that may be evidence that a domain name is not an Abusive Registration. The Respondent relies on the following provisions:

4aiC that before being aware of the Complainant's cause for complaint (not necessarily the "complaint" under the DRS), the Respondent has

C. made legitimate non-commercial or fair use of [the Domain Name];

and

4b Fair use may include sites operated solely in tribute to or in criticism of a person or business.

The Complainants say this is a case of "initial interest confusion", described in the 'Dispute Resolution Service – Expert Overview' as follows:

'Commonly, Internet users will visit web sites either by way of search engines or by guessing the relevant URL. If the domain name in dispute is identical to the name of the Complainant and that name cannot sensibly refer to anyone else, there is bound to be a severe risk that a search engine, which is being asked for the Complainant, will produce high up on its list the URL for the web site connected to the domain name in issue. Similarly, there is bound to be a severe risk that an Internet user guessing the URL for the Complainant's web site will use the domain name for that purpose.

In such cases, the speculative visitor to the registrant's web site will be visiting it in the hope and expectation that the web site is a web site "operated or authorised by, or otherwise connected with the Complainant." This is what is known as 'initial interest confusion' and the overwhelming majority of Experts view it as a possible basis for a finding of Abusive Registration, the vice being that even if it is immediately apparent to the visitor to the web site that the site is not in any way connected with the Complainant, the visitor has been deceived. Having drawn the visitor to the site, the visitor may well be faced with an unauthorised tribute or criticism site (usually the latter) devoted to the Complainant; or a commercial web site, which may or may not advertise goods or services similar to those produced by the Complainant. Either way, the visitor will have been sucked in/deceived by the domain name.'

In DRS 06284 the disputed domain names which led to a protest site (rayden-engineering.co.uk and rayden-engineering.org.uk) were identical to the complainant's name. The Appeals Panel made the following observations:

"...there is in our view no doubt that the Policy does contemplate circumstances in which it will be legitimate for a domain name to be registered for use in connection with a protest site where the domain name

comprises a name that is "identical or similar" to a name or mark in which the complainant has Rights. The Policy does not, however, explicitly address the question whether any distinction is to be drawn between those cases where the domain name is essentially identical to the Complainant's trade mark (eg <trademark.com> or <trade-mark.co.uk>), or confusingly similar to the trade mark, and those where the domain name includes a modifier or variant from which it is obvious that the domain name is associated with a protest site (eg <trademarksucks.com> or <trademarkisintentondestroyingtheworld.co.uk>”).

...

“The essence of an Abusive Registration under the Policy is that the domain name was registered or has been used in a manner that has taken unfair advantage of or has been unfairly detrimental to the complainant's Rights. Here it is clear, first, that the Respondent registered the Domain Names so that Internet users would be attracted to visit the Website because of the Domain Names; with the precise intention that she would thereby increase the number of people that would be confronted with her views on the Complainant and those associated with the Complainant [...]. She has used domain names that are no more than the trading names of the Complainant without any indication that they lead to a protest site. In effect the Respondent is posing as the Complainant in order to attract members of the public to the site”.

In the present case, it is clear that the Respondent registered the Domain Name so that Internet users would be attracted to visit the website to which the Domain Name leads because of the Domain Name, with the intention of increasing the number of people that would be confronted with criticisms of RTA. Having reached the website, they will immediately realize that it is not an RTA website. That is not relevant the test, however, since, as explained in the Expert Overview cited above, “initial interest confusion” can arise upon exposure to a domain name before any website is reached.

Unlike the position in DRS 06284, the Domain Name is not identical to the RTA mark. It contains the modifier or variant “- complaints”. Does this make it obvious that the Domain Name is associated with a protest site? In my opinion it does not. Although it is clear from the modifier or variant that any site to which the Domain Name leads is a complaints site about RTA, it is not clear from the Domain Name whether that site is run or authorized by RTA or by someone else. Nor is it clear from the Domain Name that the registrant is posing as or impersonating RTA.

Internet users encountering the Domain Name as a result of a search or choosing to enter it into their browser may well wonder whether the site to which it leads is a protest site or the “official” complaints department of RTA. Confusion which produces the mental state of merely wondering whether a domain name is registered to, operated or authorised by, or otherwise connected with a complainant is insufficient to come within paragraph 3a(ii) of the Policy, which requires the degree of confusion which produces a belief to that effect.

Whether the Domain Name has produced such a belief is a question on which it is open to a complainant to produce evidence, such as correspondence from customers who went to the website believing they were going to an “official” RTA site. In the absence from the record of any such evidence, I am prepared to find neither that the Domain Name has induced such a belief nor that it is likely to do so. Accordingly, I find that RTA has failed to establish a case under paragraph 3aii of the Policy.

Paragraphs 3ai, 4aiC and 4b may be considered together, since they all raise the issue of what is “fair”.

It is not for me to determine the truth or otherwise of the complaints made on the website about RTA’s dealings with its clients, nor whether any comments of a defamatory nature on the website are defensible. The nature of the complaints is not so manifestly outrageous as to justify the conclusion that it is unfair. Accordingly I am not satisfied that the registration of the Domain Name was primarily for the purpose of unfairly disrupting the business of RTA.

Further, I am satisfied that, by operating a website solely in criticism of the RTA business before being aware of RTA’s cause for complaint, including the provision of advice and assistance to those with complaints about RTA, the Respondent has made legitimate fair use of the Domain Name.

In the result, the Complainants have failed to establish that, in the hands of the Respondent, the Domain Name is an Abusive Registration.

7. Decision

The Complaint is accordingly dismissed.

Signed: Alan Limbury

Dated: July 6, 2010.